

## **REMARKS/ARGUMENTS**

### **Status of the Claims**

Claims 1-30 remain in the application;

Claims 1, 5, 16, and 23 have been amended;

Claims 31-35 have been added.

### **Claim Objections**

Claim 5 was objected to because it contained an extra “a”. Claim 5 has been amended to delete the extra “a”. It is submitted that claim 5 is no longer informal and Applicant respectfully requests that the objection thereto be removed.

### **Drawings**

In the Office Action, the drawings were objected to under 37 CFR § 1.83(a) for failing to show every feature of the invention specified in the claims, with the Examiner asserting “the projection is in substantial coplanar alignment with the first channel must be shown or the feature(s) canceled from the claim(s).” Applicant strongly disagrees. The projection 100 is in substantial coplanar alignment with the first channel 52. This is clearly shown in FIG. 4, which depicts the projection 100 in substantially coplanar alignment not only with the first channel 52, but with the second channel 72 and the third channel 112 as well. Applicant submits that the objection to the drawings is in error and respectfully requests that the objection be withdrawn.

### **Claim rejection under 35 U.S.C. § 112, first paragraph**

In the Office Action, the Examiner in rejecting claim 9 asserts that:

... there is no projection shown on the top surface, where it having a first channel thus it could be in substantial coplanar with the first channel. [sic] (emphasis added).

This statement is vague, indefinite, and contradictory. However, insofar as the statement is somehow related to the statute being applied, Applicant strongly disagrees. According to The American Heritage® Dictionary of the English Language: Fourth Edition. 2000, coplanar is defined as: "Lying or occurring in the same plane." This is what the projection does in relation to the first channel. Applicant submits that the rejection of claim 9 under 35 U.S.C. § 112, first paragraph, is in error and respectfully requests that the rejection be withdrawn.

#### **Claim rejections under 35 U.S.C. § 102(b)**

Claims 1-7, 16-18, and 20-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,534,518 (Zagray).

While it is believed that the above rejection has been rendered moot by Applicants' amendment to the claims at issue, Applicant respectfully disagrees. Zagray shows and discloses an interlocking building block having a front surface, a rear surface, opposing side surfaces, a top surface with a first channel, and a bottom surface with a second channel and a projection.

Zagray does not show or disclose a projection that is located between the front and rear surfaces of his block, a feature of independent amended claims 1 and 16. Instead, Zagray shows and discloses projections 31 that are contiguous with the front and rear surfaces. This allows corner blocks, as depicted in FIGS. 2 and 3 to be oriented at right angles to each other to form surfaces that are planar and free of indentations. It is well understood that "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art

reference."<sup>1</sup> Contrary to what the Examiner asserts, Zagray does not show, either expressly or inherently, each and every element as set forth in the claims.

It is submitted that the reference of Zagray does not anticipate all of the features recited in claims independent amended claims 1 and 16. Since the dependent claims 2-7, 17, 18, and 20-22, include additional limitations, they are also not anticipated. Applicant respectfully requests that rejection of the claims 1-7, 16-18, and 20-22 under 35 U.S.C. § 102(b) be withdrawn and passed to issue or, in the alternative, reconsidered and further examined.

### **Claim rejections under 35 U.S.C. § 102(b)**

Claims 1, 8, 9, 16, and 19 also stand rejected a second time under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,534,518 (Zagray), with the Examiner making the assertion that Zagray discloses:

a top surface extending between the front, rear, and opposing sides, the top surface comprising a first channel 30, and a bottom surface extending between the front, rear, and opposed side surface, the bottom surface in opposing relation to the top surface, the bottom surface comprising a second channel 24a and a projection 12a (fig. 1).

While it is believed that the above rejection has been rendered moot by Applicants' amendment to the claims at issue, Applicant respectfully disagrees. Element 24a, as depicted in FIGS. 2, 3, and 4 of Zagray, is not a channel. Instead, element 24a is a cored air hole that extends vertically through the body of the block. Further, element 30 of Zagray is not a channel. Instead, element 30 is a transverse notch. Moreover, projection 12a is not in linear or coplanar alignment with the transverse notch 30. They are orthogonal to each other.

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<sup>1</sup> *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

In addition, as stated above, Zagray does not show or disclose a projection that is located between the front and rear surfaces of his block, a feature of independent amended claims 1 and 16. Instead, Zagray shows and discloses projections that are contiguous with the front and rear surfaces. This allows corner blocks, as depicted in FIGS. 2 and 3 to be oriented at right angles to each other to form surfaces that are planar and free of indentations.

It is well understood that "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."<sup>2</sup> Contrary to what the Examiner asserts, Zagray does not show, either expressly or inherently, each and every element as set forth in the claims.

It is submitted that the reference of Zagray does not anticipate all of the features recited in claims independent amended claims 1 and 16. Since the dependent claims 8, 9, and 19 include additional limitations, they are also not anticipated. Applicant respectfully requests that rejection of the claims 1, 8, 9, 16, and 19 under 35 U.S.C. § 102(b) be withdrawn and passed to issue or, in the alternative, reconsidered and further examined.

### **Claim rejections under 35 USC § 103(a)**

Claims 10-13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,534,518 (Zagray) in view of U.S. Patent No. 1,086,975 (Aaronson), with the Examiner asserting that:

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Zagray with Aaronson for the front and back surface having different textures. The motivation for doing so would be to differentiate between the front and back surface during application and also enhance pleasing surface for the front surface. [sic]

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<sup>2</sup> *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Applicant disagrees. It is "well-established that before a conclusion of obviousness may be based on a combination of references, there must have been a reason, suggestion, or motivation to lead an inventor to combine those references."<sup>3</sup> Zagray is not particularly concerned with the appearance of his blocks. Otherwise, he would not combine thin blocks with thick blocks in a random manner (see, FIGS. 13-18). There would be no motivation to provide a block with a particular surface when another block will be used to cover it up and the rejection lacks proper motivation.

It is respectfully submitted that the claims 10-13 are not obvious in view of Zagray in view of Aaronson, and Applicant respectfully requests that rejection of the claims under 35 USC. § 103(a) be withdrawn and passed to issue or, in the alternative, reconsidered and further examined.

#### **Claim rejections under 35 U.S.C. § 103(a)**

Claims 14 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,534,518 (Zagray) in view of U.S. Patent No. 1,086,975 (Aaronson) and further in view of U.S. Patent No. 5,622,456 (Risi).

Applicant respectfully disagrees. As explained above, the Examiner has not provided sufficient motivation to combine the references of Zagray and Aaronson. The addition of the patent of Risi adds little. As explained above, Zagray is not particularly concerned with the appearance of his blocks. Otherwise, he would not combine thin blocks with thick blocks in a random manner (see, FIGS. 13-18). There would be no motivation to provide a block with a particular surface when another block will be used to cover it up and the rejection lacks proper motivation. The same can be said of the marginal areas of Risi.

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<sup>3</sup> Pro-Mold and Tool Co. v. Great Lakes Plastics, Inc., 37 USPQ2d 1626, 1629 (Fed. Cir. 1996).

It is respectfully submitted that the claims 14 and 15 are not obvious in view of Zagray in view of Aaronson and further in view of Risi, and Applicant respectfully requests that rejection of the claims under 35 U.S.C. § 103(a) be withdrawn and passed to issue or, in the alternative, reconsidered and further examined.

**Claim rejections under 35 U.S.C. § 103(a)**

Claims 23-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,534,518 (Zagray) in view of U.S. Patent No. 6,821,058 (Dawson).

Applicant respectfully disagrees. It is “well-established that before a conclusion of obviousness may be based on a combination of references, there must have been a reason, suggestion, or motivation to lead an inventor to combine those references.”<sup>4</sup> As explained above, Zagray shows and discloses an interlocking building block, wherein the interlocking components are integral to each block. Dawson, does not have an interlocking block. However, Dawson interlocks his blocks together by using connectors. There is absolutely no reason to modify the reference of Zagray in view of Dawson when the blocks of Zagray already interlock with each other.

Further, Zagray and Dawson do not show or disclose the use of fastening elements to operatively connect their blocks to a pre-existing structure, as claimed in independent claim 23.

It is respectfully submitted that the claims 23-25 are not obvious in view of Zagray in view of Dawson, and Applicant respectfully requests that rejection of the claims under 35 U.S.C. § 103(a) be withdrawn and passed to issue or, in the alternative, reconsidered and further examined.

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<sup>4</sup> Pro-Mold and Tool Co. v. Great Lakes Plastics, Inc., 37 USPQ2d 1626, 1629 (Fed. Cir. 1996).

### **Claim rejections under 35 U.S.C. § 103(a)**

Claims 26-29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,534,518 (Zagray) in view of U.S. Patent No. 6,821,058 (Dawson) and further in view of U.S. Patent No. 1,086,975 (Aaronson).

Applicant respectfully disagrees. There is absolutely no reason to modify the reference of Zagray in view of Dawson when the blocks of Zagray already interlock with each other. Moreover, there is no reason to modify the blocks of Zagray in view of Aaronson, because Zagray is not particularly concerned with the appearance of his blocks.

It is respectfully submitted that the claims 26-29 are not obvious in view of Zagray in view of Dawson and further in view of Aaronson, and Applicant respectfully requests that rejection of the claims under 35 U.S.C. § 103(a) be withdrawn and passed to issue or, in the alternative, reconsidered and further examined.

### **Claim rejections under 35 U.S.C. § 103(a)**

Claim 30 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,534,518 (Zagray) in view of U.S. Patent No. 6,821,058 (Dawson) and U.S. Patent No. 1,086,975 (Aaronson), and further in view of U.S. Patent No. 6,298,632 (Sherwood).

Applicant respectfully disagrees. There is absolutely no reason to modify the combination Zagray in view of Dawson and Aaronson in view of Sherwood "to fill up gaps between blocks thus preventing air penetrating into building unit." [sic]. (emphasis added).

Zagray already shows and discloses a network of bonding mortar (see, FIG. 19) that prevents air from penetrating into the building unit. There is no reason to create

marginal areas and then provide them with filler, as suggested by the Examiner.

As an aside, the blocks strips 56A, identified by the Examiner, are formed on an existing brick by using a mold such as shown in FIG. 12, in a manner similar to overmolding in plastic articles. The strips are not added after a wall has been constructed. Instead, they are integrally formed on the bricks before they are used to construct a wall.

It is respectfully submitted that the claim 30 is not obvious in view of Zagray in view of Dawson, Aaronson, and further in view of Sherwood, and Applicant respectfully requests that rejection of the claim under 35 U.S.C. § 103(a) be withdrawn and passed to issue or, in the alternative, reconsidered and further examined.

## CONCLUSION

On the basis of the foregoing amendments, remarks, and arguments of record, applicant respectfully submits that claims 1-35 are in condition for allowance and Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Alternatively, if the Examiner is of the opinion that prosecution of the application may be expedited by a telephonic interview, the Examiner is invited to contact applicant's representative at the telephone number listed below.

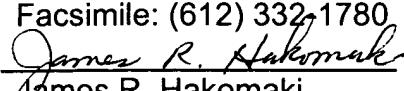
Respectfully submitted,  
For the Applicant(s)  
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22854

Date December 9, 2005

By:

  
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